

REMARKS/ARGUMENTS

Claims 1-5, 7, 9, 11-15, 17, 18, 21, and 23 were pending in this application. No claims have been amended, added or canceled. Hence, claims 1-5, 7, 9, 11-15, 17, 18, 21, and 23 remain pending. Reconsideration of the subject application as amended is respectfully requested.

Claims 1-5, 7, 9, 21 and 23 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite.

Claims 1-5, 7, 9, 11-15, 17, 18, 21 and 23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,397,194 to Houvener, *et al.* (hereinafter "Houvener"), in view of the cited portions of U.S. Patent Publication No. 2001/0029470 to Schultz, *et al.* (hereinafter "Schultz").

Claims Rejected Under 35 U.S.C. 112, Second Paragraph

The Applicant respectfully traverses the rejections of claims 1 and 21 under 35 U.S.C. §112, since the office action has not established a proper 35 U.S.C. §112, ¶2 rejection. Specifically, the office action states that the claim language is not clear. The relevant question, however, is whether the claim language would be clear to one skilled in the art, which the claim language is in this case as evidenced by prior examination of the subject matter. It seems that the present lack of clarity relates to the successful removal of McArdel as a prior art reference and not to the claim language. Hence, the Applicant believes all pending claims satisfy 35 U.S.C. §112.

Claim Rejections Under 35 U.S.C. § 103(a)

The Applicant respectfully traverses the rejection of claims 1, 11, and 18. Specifically, the office action fails to give patentable weight to the limitation "receiving information from the consumer computer that defines at least one category based on product information," stating that "'the consumer computer that defines at least one category based on product information' is not a positive recitation of the defining step." The Applicants respectfully request a citation to the appropriate rule or guideline that allows an examiner to take such discretion. Again, the rejection appears to have more to do with the successful removal of

McArdle as a reference than an improper recitation. For example, claim 21 includes a similar—though not identical—element that was given patentable weight. Hence, claims 1, 11, and 18 are believed to be allowable, at least for the reason that the cited references fail to teach the claim element.

The Applicant respectfully traverses the rejection of claim 21, since the office action does not cite a reference for "receiving information from a consumer computer that defines at least one category." The rejection of claim 21 states that Houvener teaches this but does not identify the location of the teaching in Houvener. Instead, the office action directs attention to the discussion of claim 1. At the discussion of claim 1, however, the office action correctly states that "Houvener fails to teach the steps ... receiving information from the host computer that defines as least one category based on product information." Hence, by the clear language of the office action, the rejection of claim 21 is improper.

The Applicant also respectfully traverses the rejections of all claims since the cited references teach away from one another. Hence, the cited references could not be successfully combined to produce a working embodiment of the Applicant's claimed invention and any motivation to combine them is destroyed. Specifically, Houvener teaches away from Schultz since Houvener requires paper receipts (see Houvener, col. 6, ll. 59, 60) and Schultz deals exclusively with electronic environments (see, for example, the Abstract, and paragraphs 3, 10, 29, and 31, among others, of Schultz). There is no receipt generated by Schultz to be scanned by Houvener. The most recent office action failed to address this argument. Hence, claims 1, 11, 18 and 21 are believed to be allowable, at least for this additional reason.

The remaining claims depend from one of these independent claims and are believed to be allowable, at least for the reasons stated above.

CONCLUSION

In view of the foregoing, the Applicant believes all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

Appl. No. 10/615,582
Amdt. dated December 28, 2006
Reply to Office Action of October 11, 2006

PATENT

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,

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